

REGULAR

ORDINANCE NO. 265

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS ADDING CHAPTER I-40 TO THE
MILPITAS MUNICIPAL CODE AND ESTABLISHING THE ETHICS EVALUATION PANEL

HISTORY: This ordinance was introduced (first reading) at a meeting of the City Council of the City of Milpitas on ____, 2004, upon motion by Councilmember ____, and was finally adopted (second reading) at a meeting of said Council on ____, 2004, upon motion by Councilmember _____. Said ordinance was duly passed and ordered published in accordance with the law by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1.

ADDITION OF CHAPTER I-40. Chapter 40 of Title I of the Milpitas Municipal Code, “Ethics Evaluation Panel” is hereby added to the Milpitas Municipal Code in the form of attached hereto as Attachment A and incorporated herein.

SECTION 2.

EFFECTIVE DATE; PUBLICATION. This ordinance shall take effect 30 days following is passage, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

SECTION 4.

SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

ATTACHMENT A

Title I CHAPTER 40

ETHICS EVALUATION PANEL

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I-40-16	Procedure for Handling Complaints
I-40-17	Decisions of the Ethics Evaluation Panel
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I-40-1 Establishment of Ethics Evaluation Panel

There is hereby established in the City of Milpitas an Ethics Evaluation Panel. The Ethics Evaluation Panel shall have the powers, duties, and responsibilities set forth in this chapter.

I-40-2 Composition and Qualification

A. The Ethics Evaluation Panel shall consist of four Ethics Evaluators, each of whom shall serve pursuant to a consultant contract. One of the Ethics Evaluators shall serve as the Lead Ethics Evaluator. When the Ethics Evaluation Panel is convened to resolve a complaint, the Panel shall be made up of the Lead Ethics Evaluator and two of the Ethics Evaluators, as assigned by the Lead Ethics Evaluator. The Lead Ethics Evaluator shall to the extent reasonably possible rotate the assignment of Ethics Evaluators to the Ethics Evaluation Panel such that each Ethics Evaluator hears an equal number of complaints. When the Ethics Evaluation Panel is convened for other matters, the Panel shall include all four Ethics Evaluators.

B. The initial selection of members shall be upon the recommendation of the City's Ethics Consultant, who shall screen and nominate four candidates to the City Council and nominate one to serve as the Lead Ethics Evaluator. In the future, the Ethics Evaluation Panel

itself will screen potential candidates and will nominate the most qualified candidate to the City Council. All appointments will be by a majority vote of the City Council.

C. Ethics Evaluators shall have the professional background and competence to administer this Chapter, investigate complaints, make fair judgments, and apply sanctions proportional to the violation. During the time of their service, Ethics Evaluators shall not live, vote, or have their primary place of business in the City of Milpitas, nor shall they be employed by the City of Milpitas. During his or her service as an Ethics Evaluator, an Ethics Evaluator may not serve as a consultant to the City for any project other than as an Ethics Evaluator. Ethics Evaluators shall not be a candidate for or hold public office in another city or county, shall not have participated in or made financial contributions to a City of Milpitas election campaign or to a City of Milpitas official running for any elective office, and shall not employ or be employed as a person required to register as a lobbyist with the City of Milpitas. Persons who have previously served as consultants for the City of Milpitas may be considered if it is determined that their independence of judgment has not been compromised.

I-40-3 Term

The term of office for each Ethics Evaluator shall be four years, commencing on the first day of July and ending on 30th day of June of the fourth year thereafter. Notwithstanding the foregoing, the terms of the initial four Ethics Evaluators shall be as follows: the person appointed to serve as the Lead Ethics Evaluator shall serve a four-year term; the second of the initial Ethics Evaluators shall serve a three-year term, the third of the initial Ethics Evaluators shall serve a two-year term, and the fourth of the initial Ethics Evaluators shall serve a one-year term. Notwithstanding the date of the initial Ethics Evaluator's appointments, the term of the first year shall be deemed to begin on June 30, 2004. Ethics Evaluators may serve no more than two consecutive terms.

I-40-4 Removal from Office

Ethics Evaluators may be removed from office prior to the expiration of the normal term of office only in the case of substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, or a violation of the Code of Ethics. Prior to removal, the City Council shall engage an independent investigator to investigate whether grounds for removal exist and receive a report from said investigator. Affirmative votes of four of the five members of the City Council are required to engage an independent investigator and to remove an Ethics Evaluator.

I-40-5 Vacancies

The Panel shall nominate candidates to fill any vacancies on the Panel as soon as reasonably possible. A person appointed to fill a vacancy shall serve the unexpired term of the office that has become vacant.

I-40-6 Lead Ethics Evaluator

The City Council shall each year appoint one of the Ethics Evaluators to serve as the Lead Ethics Evaluator for a term of one year from July 1 to June 30 of the following year. A Lead Ethics Evaluator may be appointed to serve consecutive terms. Notwithstanding the foregoing, the initial Lead Ethics Evaluator shall serve a term of two years. If the Council fails to appoint an Ethics Evaluator to serve as the Lead Ethics Evaluator, the Panel shall elect a member to serve as the interim Lead Ethics Evaluator until such time as the council appoints a Lead Ethics Evaluator or the term expires. An interim Lead Ethics Evaluator shall have those powers and responsibilities of a Lead Ethics Evaluator appointed by the City Council.

I-40-7 Adoption of Rules and Regulations

The Ethics Evaluation Panel shall adopt such operating protocols as it deems necessary to conduct its business, including rules of procedure. Such rules and regulations shall not be inconsistent with this Chapter and applicable federal, state, and local law.

I-40-8 Meetings

The Ethics Evaluation Panel shall hold such meetings as are necessary to transact business. A regular meeting shall be held each year in the month of June for consideration of the adoption of the Annual Report required by section I-40-16. Meetings of the Ethics Evaluation Panel shall be open to the public, unless otherwise permitted by law, and shall comply in all respects with the requirements of state law relating to public meetings. The Lead Ethics Evaluator shall have the power to call meetings. If there is no Lead Ethics Evaluator, any Ethics Evaluator shall have the power to call a meeting. Upon request of the Lead Ethics Evaluator, the City Clerk shall prepare and post an agenda for the meeting in accordance with the requirements of law.

I-40-9 Quorum

Three members of the Ethics Evaluation Panel shall constitute a quorum, and a quorum shall be required for the conduct of business.

I-40-10 Compensation and Expenses

Ethics Evaluators shall be compensated as set forth in his or her consultant contract with the City.

I-40-11 Records

The Ethics Evaluation Panel shall, with the assistance of the City Clerk, keep a record of its resolutions, determinations and findings, and other records of its activities.

I-40-12 Duties and Powers of the Ethics Evaluation Panel

Each Ethics Evaluator and the Ethics Evaluation Panel shall have, and shall be limited to, the following duties and powers:

A. To receive complaints regarding potential violations of the Milpitas Code of Ethics and Behavioral Standards by members of the City Council, City Commissioners, and candidates for City Council.

B. To conduct, in response to complaints, such hearings as are necessary to determine whether a member of the City Council, a City Commissioner, or a candidate for City Council has violated the Milpitas Code of Ethics and Behavioral Standards

C. To determine, in response to a complaint, and issue a written decision as to whether a member of the City Council, a City Commissioner, or a candidate has violated the Code of Ethics and Behavioral Standards.

D. Upon determining that a violation has taken place, to impose sanctions within the discretion of the Panel or recommend imposition of other sanctions to the City Council.

E. To adopt an annual report as required by Section I-40-16.

F. To adopt and amend such forms as may be necessary or useful to the performance of their duties under this Chapter.

G. In the event of a vacancy on the Ethics Evaluation Panel, to nominate qualified persons to the City Council to be appointed to serve as Ethics Evaluators.

I-40-13 Duties and Powers of the Lead Ethics Evaluator

The Lead Ethics Evaluator shall have the following duties and powers in addition to those of an Ethics Evaluator:

A. To receive complaints and determine whether a complaint is within the subject matter jurisdiction of the Ethics Evaluation Panel.

B. To forward complaints lodged against City employees to the City Manager.

C. To summarily reject complaints that are not within the subject matter jurisdiction of the Ethics Evaluation Panel, that fail to identify a specific alleged violation that forms the basis of the complaint, or that fail to contain sufficient facts to warrant an investigation.

D. To call meetings of the Ethics Evaluation Panel for the resolution of complaints and for other matters that require the Ethics Evaluation Panel to conduct business.

I-40-14 Complaints

A. Any person may file a complaint with the City Clerk alleging possible violations of the Milpitas Ethics Code by members of the City Council, City Commissioners, and candidates for City Council. All complaints must be filed on a form specifically provided by the City Clerk for the purpose of making complaints to the Ethics Evaluation Panel. The Commission shall have no obligation to investigate or respond to any complaint that does not contain the information required in Subsection B.

B. A complaint shall: (i) be in writing; (ii) be signed and dated by the complainant; (iii) provide, with as much detail and specificity as possible, all information requested on the form, including the name, and, if known, the mailing and electronic mail address and telephone and facsimile numbers of the accused, the provision(s) of law allegedly violated, facts constituting the alleged violation(s), the names, and, if known, the mailing and electronic mail addresses and telephone and facsimile numbers of potential witnesses, additional information, if

any, and an address, an electronic mail address, and telephone and facsimile numbers at which the complainant may be reached during normal business hours. All such information shall be provided to the best of the complainant's knowledge and belief.

C. Upon receipt of a complaint to the Ethics Evaluation Panel, the City Clerk shall enter the date and time of receipt in a log kept for that purpose and immediately transmit the complaint to the Lead Ethics Evaluator or, if there is no Lead Ethics Evaluator, to one of the Ethics Evaluators. Correspondence contained in an envelope addressed to the Ethics Evaluation Panel care of the City Clerk will be transmitted by the City Clerk to the Lead Ethics Evaluator without review of the contents and, if the envelope containing the correspondence is clearly labeled "complaint," the time and date of receipt shall be entered in the complaint log.

D. Complaint forms filed with the Ethics Evaluation Panel shall be kept confidential by the Ethics Evaluation Panel, unless the complainant consents to the release of the complaint form, until such time as the complaint has been accepted for filing at which point the complaint form becomes a public record. If necessary, the complaint form should be redacted to prevent the names of City employees from being disclosed without their consent.

I-40-15 Complaints Against City Employees

If the Lead Ethics Evaluator or the City Clerk receives a complaint that alleges a violation of the Code of Ethics or Behavioral Standards by a City employee, it shall be immediately forwarded to the City Manager or, if the complaint is against the City Manager, to the City Attorney. If a City employee is a witness or is otherwise involved in the investigation of a possible violation of the Code of Ethics or Behavioral Standards, the Ethics Evaluation Panel shall avoid publicly identifying the employee without his or her written consent. If reference to a City employee is necessary in the course of making the determinations required by this Chapter, the Ethics Evaluation Panel may identify the employee by a pseudonym such as "Employee A."

I-40-16 Procedure for Handling Complaints

A. Initial Review of Complaints. Upon receipt of a complaint, the Lead Ethics Evaluator, or, in his or her absence, the Ethics Evaluator to whom the Lead Ethics Evaluator has delegated authority, shall review the complaint and accept it for filing if the complaint: (i) complies with the requirements of section I-40-14, (ii) is within the subject matter jurisdiction of the Ethics Evaluation Panel; (iii) identifies a specific alleged violation; and (iv) contains sufficient facts to warrant an investigation. If the Lead Ethics Evaluator, or his or her designee, determines that a particular complaint does not meet the requirements for acceptance, the complaint is rejected, and the Lead Ethics Evaluator, or his or her designee, shall immediately and in writing by the most expedient means available inform the complainant of the grounds for the rejection. The Lead Ethics Evaluator, or his or her designee, shall determine whether the complaint meets the requirements for acceptance before the close of business of the next business day following the City Clerk's receipt of the complaint. If the complaint is accepted, the Lead Ethics Evaluator, or his or her designee, shall immediately provide a copy of the complaint to the City Clerk and, in accordance with section I-40-8, call a special meeting of the Ethics Evaluation Panel and so inform the City Clerk. The meeting shall be set on a date as soon as possible but in no event more than 3 business days following the City Clerk's receipt of the complaint; provided, however, with the written consent of the Lead Ethics Evaluator and the

accused, the date of the meeting may be scheduled for a date that is later than 3 business days following the City Clerk's receipt of the complaint. The City Clerk shall send notice of the meeting by facsimile or electronic mail to the accused, to the complainant, and to all other persons requesting notice of Ethics Evaluation Panel meetings at least 24 hours prior to the meeting. If facsimile numbers or electronic mail addresses are unavailable for a person entitled to receive notice pursuant to the foregoing sentence, the City Clerk shall attempt to provide 24 hours' notice of the meeting to such persons by other available means, such as by telephone.

B. Meeting to Hear Complaint. At the date and time set forth in the notice of the meeting, the Ethics Evaluation Panel shall meet to hear the complaint. The Lead Ethics Evaluator shall be the presiding officer and shall make all decisions concerning the conduct of the meeting. At the meeting, any person may present argument, whether written or oral, testimony, and documentary evidence relevant to the Panel's determination of whether a violation has occurred. Prior to the conclusion of the meeting, the Ethics Evaluation Panel shall either: (1) direction continuation of the matter to (a) receive additional information or (b) allow further deliberation by the Ethics Evaluation Panel or (2) make a decision and direct the Lead Ethics Evaluator to prepare a written decision in accordance with the decision by the close of business of the next business day following the meeting.

I-40-17 Decisions of the Ethics Evaluation Panel

A. Decisions of the Ethics Evaluation Panel shall contain a summary of the alleged violation, findings of fact supporting the decision, and a conclusion regarding whether or not a violation of the Code of Ethics occurred. When the Ethics Evaluation Panel determines that a violation has occurred, it may issue an order that requires the violator to: (1) cease and desist the violation; and/or (2) apologize to any who have been harmed by the violation. In addition, decisions of the Ethics Evaluation Panel shall use the following hierarchy of terms (from least to most severe) to issue public criticism based on the severity of the violation: (i) criticism; (ii) reprimand; (iii) reproach; (iv) condemnation. The decision of the Ethics Evaluation Panel may also recommend further action by the City Council, such as suspension or removal from office, censure, or further legal action.

B. Within 2 business days of the meeting at which the decision is made, the written decision shall be published on the City's website on a webpage specifically maintained for the purpose of archiving Ethics Evaluation Panel decisions, and a copy of the final decision shall be mailed and sent by fax or electronic mail, if facsimile and electronic mail addresses are available, to the complainant, the person alleged to have violated the Code of Ethics, and the City Clerk. Any other person desiring a copy of the decision may request a copy from the City Clerk. The City Clerk shall place the decision on the City Council's next agenda for the City Council's information.

I-40-18 Annual Report

Each year in June the Ethics Evaluation Panel shall adopt an annual report and submit it to the Community Advisory Commission concerning the work of the Ethics Evaluation Panel during the previous twelve months, the Ethics Evaluation Panel's effectiveness in ensuring compliance with the Code of Ethics, and any recommendations for necessary changes to the Code of Ethics, the Behavioral Standards, and this Chapter.